



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91836; File No. SR-BOX-2021-08]

### **Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility to Establish a Policy Relating to Billing Errors**

May 11, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 6, 2021, BOX Exchange LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Fee Schedule on the BOX Options Market LLC (“BOX”) facility to establish a policy relating to billing errors. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet website at <http://boxoptions.com>.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend its Fee Schedule to establish a provision related to billing errors and fee disputes. More specifically, the Exchange would adopt language in Section VII.B of the BOX Fee Schedule (Fee Disputes) that would provide that all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Participants and Non-Participants based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, which includes all impacted transactions that occurred during those months.<sup>5</sup> The Exchange will apply the three month look back regardless of whether the error was discovered by the Exchange or by a Participant or Non-Participant that submitted a fee dispute to the Exchange.<sup>6</sup>

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<sup>5</sup> For example, if the Exchange becomes aware of a transaction fee billing error on April 1, 2021, the Exchange will resolve the error by crediting or debiting Participants based on the fees or rebates that should have been applied to any impacted transactions during January, February and March 2021. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the April 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, April 1, 2021) and thereafter, would be billed correctly.

<sup>6</sup> The Exchange notes that the current policy which states that all fee disputes must be submitted no later than sixty (60) calendar days after receipt of a billing invoice will remain in place.

The purpose of the proposed change is to encourage Participants and Non-Participants to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner. The Exchange notes that it provides Participants with both daily and monthly fee reports and thus believes they should be aware of any potential billing errors within three months. Further, any fees assessed on Non-Participants are sent as monthly invoices, and thus these firms will likewise receive sufficient notice of any potential billing errors. Requiring that Participants and Non-Participants submit disputes in writing and provide supporting documentation encourages them to promptly review their invoices so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (e.g., applicable fees and order information) is still easily and readily available. This practice will avoid issues that may arise when Participants or Non-Participants do not dispute an invoice in a timely manner and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes. As such, the proposed rule change would alleviate administrative burdens related to billing disputes, which could divert staff resources away from the Exchange's regulatory and business purposes. The proposed rule change to provide all fees and rebates are final after three calendar months also provides both the Exchange and Participants and Non-Participants finality and the ability to close their books after a known period of time.

The Exchange notes that the proposed change is similar to a policy currently in place at another exchange.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the

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<sup>7</sup> See Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR-CboeBZX-2020-094).

Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that providing that all fees and rebates are final after three months (i.e., resolving billing errors only for the three full calendar months preceding the month in which the Exchange became aware of the error), is reasonable as both the Exchange and Participants and Non-Participants have an interest in knowing when its fee assessments are final and when reliance can be placed on those assessments. Indeed, without some deadline on billing errors, the Exchange and Participants and Non-Participants would never be able to close their books with any confidence. Furthermore, as noted above, another Exchange similarly considers their fees final after a similar period of time. The proposed change is also equitable, and not unfairly discriminatory because it will apply equally to all Participants (and Non-Participants that pay Exchange fees) and apply in cases where either the Participant (or Non-Participant) discovers the error or the Exchange discovers the error.

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> Id.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change has any impact on competition. The proposed rule change would establish a clear process that would apply equally to all Participants. Additionally, the proposed rule change is similar to rules of another exchange. The Exchange does not believe such proposed changes would impair the ability of Participants or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because the proposed changes would apply equally to all Participants, the proposal does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder. The Exchange believes that the proposal is non-controversial, does not pose an undue burden on competition, and does not raise any novel issues because the proposed change is designed to establish a practice related to billing errors and fee disputes that will apply uniformly to all Participants and Non-Participants and is similar to the billing policy in effect on another national securities exchange.<sup>13</sup> According to the Exchange, the proposal would allow the Exchange and market participants to consider all fees and rebates final after

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>13</sup> See supra note 7.

three calendar months, which in turn would provide both the Exchange and Participants and Non-Participants finality and the ability to close their books after a known period of time.

The Exchange has asked the Commission to waive the 30-day operative delay for this filing, so that the proposed rule change will become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to modify the BOX Fee Schedule to adopt a provision related to billing errors and fee disputes that is designed to provide clarity and certainty with respect to when Exchange fees and rebates may be considered final. Further, the proposed rule change would allow BOX to adopt a billing policy that is similar in all material respects to provisions currently in effect on other national securities exchanges<sup>14</sup> and therefore does not raise any new or novel regulatory issues. Accordingly, the Commission designates the proposed rule change as operative upon filing.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

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<sup>14</sup> See, e.g., supra note 7.

<sup>15</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-BOX-2021-08 on the subject line.

#### Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2021-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website

(<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you

wish to make available publicly. All submissions should refer to File Number SR-BOX-2021-08 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>16</sup> 17 CFR 200.30-3(a)(12).